IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 646 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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RAJU @ INDRAVADAN MANILAL AND ANOTHER - Appellants

Versus

STATE OF GUJARAT - Opponent

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Appearance :
MR MJ BUDDHBHATTI for the Appellant.
MRS SHILPA UNWALLA for the Opponent.
MR ND GOHIL, ADDITIONAL PUBLIC PROSECUTOR for the Opponent.
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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 04/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Instant appeal, filed under Section 374 (2) of the Code of Criminal Procedure, 1973, (“the Code”, for short)

is directed against judgment dated May 12, 1997 rendered by learned Additional City Sessions Judge, Court No. 11, Ahmedabad in Sessions Case No. 229 of 2004 by which the appellants are convicted under Section 302 read with 34 Indian Penal Code, 1860 (“IPC”, for short) as well as under Section 307 read with 34 IPC, and each sentenced to RI for life and fine of Rs. 5,000/- (Rupees Five Thousand Only), in default RI for 3 months for commission of offence punishable under Section 302 read with 34 IPC as well as RI for 7 years and fine of Rs. 3,000/- (Rupees Three Thousand Only), in default RI for 2 months, for commission of offence punishable under Section 307 read with 34 IPC. It may be mentioned that the learned Judge of the Trial Court has directed that substantive sentences imposed on the appellants shall run concurrently.

2. The facts emerging from the record of the case are as under:

Deceased Bharatbhai Ramanlal Amin with his brothers Drupadkumar and Rohitbhai was running Shiv Video Centre in Asarva Village, Ahmedabad. The deceased had employed witness Arvind Goswami, who was supposed to issue tickets

to the spectators from counter and run the projector. On March 31, 1994, Mr. Goswami reported for duty at 8 AM in the morning. At about 8.45 AM, the appellant No. 1 i.e. Raju @ Indravadan Manilal came to Shiv Video Centre and asked Mr. Goswami to inform him as to which picture was being shown in the Video Centre. Mr. Goswami asked him to verify the said fact by looking at the Board which was displayed outside. Thereupon, the appellant No. 1 asked Mr. Goswami to keep a seat vacant for him. Mr. Goswami asked the appellant No. 1 to enter the Video Centre after purchasing a ticket. This enraged the appellant No. 1 and after administering threats to Mr. Goswami, he left the Video Centre in a huff. At about 9.30 AM, Ms. Kasturiben Goswami, who is mother of witness Arvind Goswami, and Ms. Surekhaben Goswami, who is sister of witness Arvind Goswami, came at the Video Centre. The three were talking by the side of road about examination of brother of witness Arvindbhai. At that time, the appellant No. 1 armed with chisel accompanied by the appellant No. 2 i.e. Kana @ Kanaiyalal Dahyalal Thakore, who was armed with a *gupti* and deceased-accused Dilip *alias* Das Devaji Solanki, who was armed with *dharia,* came at the place where witness Arvind Goswami was talking with his mother and sister. The appellant No. 3 i.e.

Dilip delivered blow with blunt portion of *dharia* on head of witness of Arvind Goswami. Therefore, his mother and sister attempted to save him. The appellant No. 1 caused injury to mother of witness Arvind Goswami on her head with chisel whereas the appellant No. 2 caused injury by means of *gupti* on hand of her sister. As they were assaulted, they raised shouts for help, as a result of which, the owner of Shiv Video Centre i.e. deseased Bharatbhai, and others rushed to the place of incident. On seeing that people were coming to the rescue of witness Arvind Goswami and his sister as well as mother, the three appellants ran away with their weapons. Deceased Bharatbhai made arrangement to send injured Arvind, injured Ms. Kasturiben and injured Ms. Surekhaben to Civil Hospital for treatment. Ms. Kasturiben was admitted as an indoor patient. At about 11 AM, Rohit, who was younger brother of deceased Bharatbhai, was manning the counter of the Video Centre whereas deceased Bharatbhai was standing outside his Video Centre and Drupadkumar, who is also brother of the deceased, was standing near a shop of Jewellery. At that time, the appellants again reappeared on scene with weapons in their hands. Before any one could understand anything, the appellant No. 1 delivered chisel blow on stomach and

chest of deceased Bharatbhai. As the deceased apprehended danger to his life, he started running towards Mayur Laboratory to save his life. Thereupon, all the three accused chased him. After over-powering deceased, the appellant No. 2 gave *gupti* blow on stomach of deceased whereas deceased-accused Dilip caused injuries on shoulder and back of the deceased by means of *dharia*. On seeing that his brother was being assaulted, Drupadkumar and others rushed to the rescue of the deceased and, therefore, the appellants fled the place of incident with their weapons. Deceased was removed to Civil Hospital in car of friend of Drupadkumar. The Medical Officer on duty, after examining, declared that deceased Bharatbhai was brought dead before him. Casualty Medical Officer Dr. Belaben, who was on duty at Civil Hospital, informed Police Constable Harsinhbhai, who was discharging duties at the hospital that deceased had sustained injuries and expired. Police Constable Harsinhbhai in turn informed PSO Shahibaug Police Station, Ahmedabad City, that deceased Bharatbhai Amin, residing in Varsha Society, Goda Camp, Shahibaug, Ahmedabad had quarrel with opponents at 11 AM on March 31, 1994 and he was declared dead on examination by Doctor on duty of Casualty Ward. On receipt of

information, necessary entry was made in the Police Diary maintained at the Police Station. At about 11.50 AM, PSO of Shahibaug Police Station informed Mr. M. K. Megha, who was then PSI, Investigation Squad, about the contents of entry. Thereupon, Mr. Megha went to Civil Hospital. There, he found that eye-witness Drupadkumar was present. Therefore, he recorded complaint of Drupadkumar. He held inquest on the dead body of deceased and addressed a *yadi* to the Executive Magistrate to record dying declaration of Ms. Kasturiben under Section 32 of the Indian Evidence Act, 1872. Further, investigation into the complaint of Drupadkumar was made by Mr. J. R. Prajapati, who was then PI of Shahibaug Police Station. He drew *panchnama* of place of incident and collected blood samples from the place of incident. He recorded statements of those persons who were found to be conversant with the facts of the case and made necessary arrangement for sending dead body for post-mortem examination. During the course of investigation, all the three accused were arrested on April 4, 1994 and blood stained clothes of the appellants were seized under a *panchnama.* While in police custody, all the three accused made different disclosure statements, pursuant to which weapons used by them were discovered from a secluded place. The incriminating

articles seized were sent to Forensic Science Laboratory (FSL) for analysis. On completion of investigation, the two appellants and deceased-accused Dilip were chargesheeted in the Court of learned Metropolitan Magistrate, Court No. 2, Ahmedabad for commission of offences punishable under Section 302 read with 34 and Section 307 read with 34 IPC.

As offences punishable under Sections 302 and 307 IPC are exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Ahmedabad, for trial, where it was numbered as Sessions Case No. 229 of 1994. The learned Additional Sessions Judge, to whom the case was made over for trial, framed necessary charge against the appellants and deceased-accused Dilip at Exh. 1. It was read over and explained to them. They pleaded not guilty to the same and claimed to be tried.

On October 6, 1995, the learned Additional Public Prosecutor submitted an application, at Exh. 5, stating that original accused No. 3 Dilip @ Das Devaji Solanki expired in Hospital situated in Central Jail, Sabarmati, on September 27, 1995 and, therefore, case against him should be treated as having abated. The learned

Additional Sessions Judge accepted the said application and treated the case as having finally abated against original accused No. 3 i.e. Dilip @ Das Devaji Solanki. The prosecution, thereafter, examined: (i) eye-witness Drupadkumar Ramanlal Amin as PW 1, at Exh. 30; (ii) Prafulchandra Ambalal Desai as PW 2, at Exh. 38; (iii) Ms. Surekhaben Ramprasad Goswami as PW 3, at Exh. 39; (iv) Arvind Ramprasad Goswami as PW 4, at Exh. 42; (v) Jayendrabhai Surendrabhai Patel as PW 5, at Exh. 43; (vi) Medical Officer Dr. Dipak Dahyalal Mistry as PW 6, at Exh. 44; (vii) Hareshbhai Asabhai Patel as PW 7, at Exh. 46; (viii) Girishkumar Kantilal Gohil as PW 8, at Exh. 48; (ix) Jagdish Sunderlal Parmar as PW 9, at Exh. 55; (x) Kamlesh Vasudev Pandya as PW 10, at Exh. 58; (xi) Ms. Kasturiben Ramprasad Goswami as PW 11, at Exh. 69; (xii) Rohitbhai Ambalal Amin as PW 12, at Exh. 70; (xiii) PSI Maganlal Kababhai Megha as PW 13, at Exh. 71; and (xiv) Investigating Officer PI Mr. Jivabhai Ratnabhai Prajapati as PW 14, to prove its case against the appellants. The prosecution also produced documentary evidence, such as: (i) Inquest Report of the deceased, at Exh. 31; (ii) *panchnama* indicating seizure of clothes of the deceased, at Exh. 32; (iii) *panchnama* indicating seizure of blood stained clothes of Ms. Kasturiben, at Exh. 33; (iv)

panchnama of seizure of blood stained clothes of injured Arvind Goswami, at Exh. 34; (v) *panchnama* of seizure of blood stained of Ms. Surekhaben Goswami, at Exh. 35; (vi) report issued by FSL, at Exh. 37; (vii) map of place of incident, at Exh. 41; (viii) post-mortem note of deceased, at Exh. 45; (ix) *panchnama* indicating discovery of chisel, *gupti* and *daria* of the three accused pursuant to separate disclosure statements made by them, at Exh. 47; (x) *panchnama* indicated seizure of clothes of the appellants, at Exh. 52; (xi) arrest *panchnama* of the accused, at Exh. 53; (xii) *yadi* forwarded by PSI to the Executive Magistrate to record dying declaration of Ms. Kasturiben, at Exh. 56; (xiii) statement of Ms. Kasturiben recorded by Executive Magistrate, at Exh. 57; (xiv) *panchnama* of place of incident, at Exh. 59; (xv) information which was received from Constable on duty at Civil Hosptial by PSO to Shahibaug Police Station, at Exh. 72; (xvi) certificate indicating injuries sustained by Ms. Surekhaben, at Exh. 73; (xvii) *yadi* forwarded by PSI to the Medical Officer to treat Ms. Kasturiben and Arvindbhai, at Exh. 74, etc. in support of its case against the accused.

3. After recording of prosecution witnesess was over,

the learned Judge of the Trial Court explained to the appellants circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements, as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the appellant No. 1 claimed that he was innocent and that he was inclined to examine defence witness whereas the appellant No. 2 claimed in his further statement that he was innocent and would rely upon the testimony which might by tendered by witness who was to be examined by the appellant No. 1. The appellant No. 1, thereafter, examined UmanandGiri ShivramGiri as defence witness No. 1, at Exh. 80.

4. On appreciation of evidence led by the parties, the learned Judge held that it was proved beyond reasonable doubt that deceased Bharatbhai died a homicidal death. According to the learned Judge, it was satisfactorily established by the prosecution that the appellants had given blows to the deceased on various parts of his body with weapons like chisel and *gupti* and, thus, aided and abetted commission of offence of murder, and, therefore, both the appellants were liable to be convicted under Sections 302 read with 34 IPC. The learned Judge

referred to the testimony of injured Arvind, injured Ms. Kasturiben and injured Ms. Surekhaben and after examining the same, the learned Judge held that the appellants had attempted to murder the three injured witnesses, as a result of which, the appellants were liable to be convicted under Sections 307 read with 34 IPC. The learned Judge further believed evidence led by the prosecution regarding discovery of weapons on the basis of disclosure statements made by the appellants and held that it was an incriminating circumstance against the appellants. The learned Judge referred to report of FSL and noticed that the blood-group found on the weapons discovered as well as clothes put on by the appellants was the same as that of the deceased, which in turn, established that the appellants were in close proximity of the deceased when deceased was fatally wounded. In view of abovereferredto conclusions, the learned Judge has convicted the appellants under Section 302 read with 34 IPC as well as Section 307 read with 34 IPC and imposed sentences referred to earlier by judgment dated May 12, 1997, giving rise to instant appeal.

5. This Court has heard Mr. M. J. Buddhbhatti, learned Counsel of the appellants as well as Mr. N. D. Gohil,

learned Additional Public Prosecutor for the State and Mrs. Shilpa Unwala, learned Counsel appearing for the original complainant, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

6. The fact that deceased Bharatbhai died a homicidal death is not disputed by the learned Counsel of the appellants before this Court. The injuries which were sustained by the deceased are noticed in inquest report produced by the prosecution at Exh. 31. The complainant, who is eye-witness, and others have stated that deceased was assaulted with weapons like chisel, *gupti* and *dharia*. The testimony of Dr. Dipak Mistry, recorded at Exh. 44, makes it evident that on March 31, 1994, he was discharging duties as Tutor in Forensic Medicine Department of Civil Hospital and at 2.30 PM, dead body of deceased Bharatbhai was brought before him for autopsy. The Medical Officer, in his substantive evidence before the Court, has enumerated 16 external as well as internal injuries, which were noticed by him while performing

autopsy on the dead body of the deceased. The Medical Officer stands completely corroborated by contemporary document on record, namely, post-mortem notes of the deceased produced by the prosecution at Exh. 45. It is nobody's case that the injuries, which were noticed by the Medical Officer on dead body of the deceased while performing post-mortem examination, were either suicidal or accidental. Thus, the finding by the learned Judge of the Trial Court that deceased died of a homicidal death is found to be imminently just and is hereby upheld.

7. The plea, that charge framed at Exh. 1 is defective inasmuch as there is misjoinder of charges and, therefore, the trial should be treated as having been vitiated, has no substance. It is relevant to notice that in the first part of incident, which took place at 9.30 AM, three prosecution witnesses were injured by the three appellants and they had to flee the place of incident because of intervention of the deceased. The second part of the incident took place at 11 AM when, again, the appellants armed with deadly weapons mounted fatal attack on the deceased and murdered him. Thus, this is a case, where series of acts are so connected together as to form the same transaction. More offences

than one are committed by the same persons with reference to first incident of assault on injured Arvindbhai and his sister and mother, and, therefore, the trial for more than one offences cannot be treated as bad in law in view of the provisions of Section 220 of the Code of Criminal Procedure, 1973. Even otherwise, the plea, that there was misjoinder of charges was never raised before the Trial Court at any point of time. This plea has been raised for the first time for consideration of the Appellate Court. The effect of omission to frame, or absence of, or error in, charge is provided in Section 464 of the Code. Sub-section (1) of Section 464 of the Code provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice, has in fact been occasioned thereby. This Court wanted to know from the learned Counsel of the appellants as to which prejudice was caused to the appellants because of so-called misjoinder of charges. The learned Counsel of the appellants could not point out any fact indicating that

failure of justice was in fact, occasioned because of misjoinder of charges. The record shows that all the eye-witnesses were permitted to be cross-examined at length by the Trial Court. It is not the case of the appellants that because of so-called misjoinder of charges, they were not able to place their defence properly before the Court. Therefore, the trial cannot be regarded as having been vitiated because of so-called misjoinder of charges. The first plea raised, therefore, fails and is hereby rejected.

The contention, that independent witnesses, though available, are not examined by the prosecution and, therefore, after drawing adverse inference against the prosecution, its case should be disbelieved, is merely stated to be rejected. A bare perusal of the record makes it very evident that witness Jayendrabhai Surendrabhai Patel, examined at Exh. 43, is totally an independent witness. It could not be suggested by defence to this witness that he was in any manner interested in the deceased or injured persons. The prosecution case stands firmly unfolded and established by other eye-witnesses and injured witnesses. Under the circumstances, the question of non-examination of

independent witnesses pales into insignificance.

In **Ramanand Yadav Vs. Prabhu Nath Jha and Others, AIR 2004 SC 1053,** the question of non-examination of independent witnesses is considered in detail. After review of law on the point, it has been held that persons in some case may like to come and depose as witness and in some other cases, there is likelihood of partisan approach and, therefore, a mere non-examination of independent witness would not affect the prosecution version. What is ruled by the Supreme Court is that whenever the plea is taken that the witness is partisan or had any hostility towards the accused, foundation for the same has to be laid and additionally, the accused persons have always the option of examining the left out persons as defence witnesses. In spite of the gruelling cross-examination of the witnesses, it could not be suggested to them that they were on inimical terms with any of the appellants and were out to implicate the appellants falsely in such a serious case. As pointed out by the Supreme Court, the so-called independent witnesses could have been examined as their defence witnesses, but that is not done by the appellants. Under the circumstances, the plea based on non-examination of

independent witnesses cannot be accepted and is hereby rejected.

The contention, that the three accused had nothing in common nor there was common intention to kill the deceased and, therefore, the appellants should be acquitted, has no substance at all. The evidence on record clinchingly establishes that in the morning, the appellant No. 1 had approached witness Arvindbhai and asked him to keep a seat in the Video Centre vacant for him. It is further established that on refusal by him, the appellant No. 1 was enraged and had threatened Arvindbhai with dire consequences. In order to execute his threat, the appellant No. 1 had returned within a short time with the appellant No. 2 and deceased Dilip. All the three accused were armed with deadly weapons such as chisel, *gupti* and *dharia*. The evidence further shows that witness Arvindbhai, who was talking with his mother and sister, was assaulted by the appellant No. 1 and when his mother and sister had tried to save him, they were also injured by the appellants. The evidence on record further makes it very clear that on assault being mounted, witness Arvindbhai, his mother and sister had raised shouts for help, as a result of which, deceased

Bharatbhai had come to their rescue and, therefore, the appellants had to flee the place of incident. What is relevant to notice is that at 11 AM, all the three accused, armed with deadly weapons, had come to the place of incident and assaulted the deceased fatally. The deceased, after receiving injuries, at the hands of the appellant No. 1, had started running to save his life, but he was chased by all the appellants and after over-powering him, he was done to death. Therefore, all the abovereferredto acts unerringly establish that the common intention of the appellants and deceased-accused Dilip was to attempt murder of Arvind, his mother Ms. Kasturiben, his sister Ms. Surekhaben as well as to murder deceased Bharatbhai. The criminal acts were done by three accused in furtherence of common intention and, therefore, each of the appellants is liable for that act in the same manner as if it was done by him alone. On the facts and in the circumstances of the case, invocation of Section 34 IPC to the facts of the case cannot be regarded as erroneous. Therefore, no benefit can be given to the appellants on the ground that the appellant had nothing in common to share with each other or that their common intention was not to murder the deceased.

The plea, that the appellants committed culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the appellants having taken undue advantage or acted in a cruel or unusual manner and, therefore, Exception 4 to Section 300 IPC would apply to the facts of the case, has no merits at all. The only offence, if any, which was committed by deceased Bharatbhai was to make an attempt to rescue injured Arvindbhai, injured Ms. Kasturiben and injured Ms. Surekhaben from being caused further injuries by the appellants. In fact, no oral altercation worth the name had taken place between the appellant No. 1 on one hand and the deceased on the other. However, the appellant No. 1 was annoyed because he was not able to assault injured Arvindbhai, injured Ms. Kasturiben and injured Ms. Surekhaben to his satisfaction and had to flee the place of incident because of intervention of the deceased. Therefore, the appellant No. 1 again reappeared at the place of incident with the appellant No. 2 and deceased-accused Dilip and all the three were armed with deadly weapons like chisel, *gupti* and *dharia*. The first two blows were caused to the deceased by the appellant No. 1. On receipt of those blows, the deceased

had started running to save his life, but was over-powered by all the three appellants and, thereupon, done to death by inflicting several blows with their respective weapons. Therefore, there is no manner of doubt that the assault on deceased was mounted with premeditation. There was no sudden fight in the sense that there was no combat between the deceased on the one hand and the appellants on the other. In fact, the appellants had taken undue advantage by over-powering and killing the deceased who was running to save his life. Therefore, provisions of Exception 4 to Section 300 IPC cannot be made applicable to the facts of the case. The ingredients which must be satisfied before application of Exception 4 is that the act must be committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage and the accused had not acted in a cruel and unusual manner. In **Kikar Singh Vs. State of Rajasthan, AIR 1993 SC 2426,** it is ruled that there must be mutual combat on exchanging blows on each other and then only Exception 4 can be made applicable to the facts of a particular case. In this case, the evidence on record does not indicate that there was mutual combat on exchanging blows between the deceased, who was unarmed,

and the appellants, who were armed with deadly weapons. Therefore, Exception 4 cannot be made applicable to the facts of the case.

The contention, that the information, which was conveyed by Police Constable on duty at Civil Hospital to PSO of Shahibaug Police Station, should be treated as FIR within the meaning of Section 154 of the Code, and as the appellants are not named therein, their appeal should be allowed, is devoid of merits. It is relevant to notice that Constable on duty at Civil Hospital had given information on the basis of facts which were disclosed to him by Casualty Medical Officer Dr. Belaben. It is relevant to notice that Medical Officer Dr. Belaben is not examined as one of the witnesses in this case. Further, in the said information, it was conveyed that the deceased had received injuries at the hands of his opponents but names of the opponents were not mentioned at all. Therefore, it is wrong to contend that the so-called information given by Constable on duty at Civil Hospital to PSO of Shahibaug Police Station should be treated as First Information Report. The First Information Report should normally contain the names of the accused and other relevant particulars such as

motive, etc. The names of the accused were for the first time disclosed when complaint was lodged by Drupadkumar Ambalal Amin, who is brother of the deceased, at the hospital. The contents of complaint stand completely proved by the reliable testimony of Drupadkumar Ambalal Amin, recorded at Exh. 30, read with that of PSI Mr. M. K. Megha, recorded at Exh. 71. On the facts and in the circumstances of the case, this Court is of the opinion that the learned Judge of the Trial Court was not justified in not exhibiting the complaint lodged by Drupadkumar and, therefore, the complaint lodged by Drupadkumar is ordered to be exhibited at Exh. 71A. This Court further notices that the prosecution had produced a list of documentary evidence sought to be relied upon by it, at Exh. 29. The list included injury certificates of Ms. Kasturiben, Arvind and Ms. Surekhaben. This list of documents was shown to the learned Counsel of the defence and he was called upon to admit or deny the genuineness of each document mentioned therein. The record shows that an endorsement was made by the defence Counsel that the genuineness of certficates of injuries relating to Ms. Kasturiben, Arvind and Ms. Surekhaben was not in dispute and that they should be exhibited. In spite of such an endorsement, the learned Judge has not exhibited

certificate of injury of Ms. Kasturiben and certificate of injury of Arvind Goswami. Under the circumstances, those documents are also ordered to be exhibited at Exh. 75A and 75B. A bare reading of complaint lodged by witness Drupadkumar makes it evident that necessary particulars are mentioned therein, including names of injured and other witnesses as well as names of the accused. On the facts and in the circumstances of the case, the information, which was conveyed by Constable on duty at Civil Hospital to PSO of Shahibaug Police Station, cannot be treated as FIR in the case, as it was cryptic and no benefit can be granted to the appellants on the ground that their names were not mentioned therein.

8. This brings the Court to consider the circumstantial evidence led by the prosecution against the appellants. From the testimony of the Investigating Officer read with contents of *panchnama*, produced at Exh. 47, it becomes evident that pursuant to three different disclosure statements made by the three accused, blood stained weapons i.e. chisel, *gupti* and *dharia* were discovered from a secluded place situated in the compound of temple of Lord Hanuman. Further, it is also satisfactorily

established by the prosecution that at the time of arrest, the clothes put on by the appellants were found to be blood stained and were seized under a *panchnama*, which is produced at Exh. 52. The report of the analysis is produced by the prosecution at Exh. 37. The report indicates that the blood-group of the deceased was 'O' and blood-group found on the weapons as well as on the clothes put on by the appellants was also 'O'. The find of same blood-group as that of the deceased on the weapons, discovered pursuant to voluntary statements made by the accused, and on clothes put on by them would establish that the appellants were in close proximity of the deceased when the deceased was fatally wounded and that the appellants had every opportunity of committing murder of the deceased. Thus, the circumstantial evidence on record also lends complete corroboration to ocular version presented by the prosecution.

As noticed earlier, first of all, the appellant No. 1 had caused injuries with chisel on vital parts of the body of the deceased. Thereupon, the deceased had started running to save his life but the appellants had chased him and caused further injuries, as a result of which, the deceased died on the spot. Dr. Dipak Mistry,

who performed autopsy on the dead body of the deceased, has asserted in his testimony, recorded at Exh. 44, that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause his death. Thus, the provisions of Clause Thirdly of Section 300 IPC would apply to the facts of the case and it will have to be held that the appellants are rightly convicted for commission of offence punishable under Section 302 IPC.

As far as conviction of the appellants under Section 307 read with 34 IPC is concerned, the same is not seriously challenged before this Court. In fact, the said conviction stands amply proved by the reliable testimony of injured Arvind Goswami, examined at Exh. 42, injured Ms. Kasturiben, examined at Exh. 69 and injured Ms. Surekhaben, examined at Exh. 39. All the above named witnesses stand corroborated by their certificate of injuries, which are ordered to be exhibited in the appeal. There is no manner of doubt that the three witnesses were caused injuries on their vital parts of their body. For application of Section 307 IPC, it is not necessary for the prosecution to prove that bodily injury caused was capable of causing death. This principle of law stands well established by catena of

decisions of Supreme Court. Therefore, the conviction of the appellants under Section 307 read with 34 IPC cannot be regarded as erroneous so as to call for interference of this Court in instant appeal.

9. The net result of above discussion is that this Court does not find any substance in any of the contentions raised by the learned Counsel of the appellants and, therefore, the appeal deserves to be dismissed.

10. For the foregoing reasons, the appeal fails and is dismissed. Muddamal be disposed of in terms of directions given by the learned Judge in the impugned judgment.

[J. M. PANCHAL, J.]

[H. B. ANTANI, J.]

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